IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

A.O. No. 834 of 2001

(Old No. 135 of 1999)

Date of Decision :- 03-7-2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- 03-7-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. NO. 834 OF 2001.

1. Saukin Singh Negi son of Sri Surendra Singh, resident of Hotel Doiwala, district Dehradun.
2. Jaikrit Singh Bisht son of Sri Pooran Singh Bisht, resident of village and Post Kuhairh, Patwari Circle and district Chamoli.
3. Dhan Singh Bandari son of Sri Lalya Singh, resident of village Paira, post Paira (Argarh), district Tehri Garhwal.

.... Appellants.

Versus

1. New India Insurance Company through Branch Manager, Ranipur district Hardwar.
2. Smt. Sushila Devi wife of late Sri Shiv Prasad Sati
3. Jagdish son of Late Sri Shiv Prasad Sati.
4. Km. Indu.
5. Km. Bindu.
6. Km. Arti

Respondents Nos.4 to 6 daughters of Late Shiv Prasad Sati,
Respondents Nos. 2 to 6 resident of village Nautha, Patwari circle Thalla Band, tehsil and district Chamoli.

..... Respondents

Sri Rajendra Dobhal, learned counsel for the Appellants.
Sri T.A.Khan, learned counsel for the respondents.

Dated:03.07.2006

HON'BLE J.C.S. RAWAT, J.

1. This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and Award dated 6-11-1998 passed in Motor Accident Claim Case No. 119 of 1995 by Sri R.K. Rastogi, the then District Judge/Motor Accident Claims Tribunal, Chamoli, ***(in short the Tribunal)***, whereby the learned Tribunal has allowed the claim petition and awarded Rs. 50,000/- in favour of the Claimants/respondents as against the appellants Nos.1,2 and

3 along with 12% interest per annum. However, the petition was dismissed against the New India Assurance Company, respondent no.1.

2. Brief facts, giving rise to the present appeal, are that on 5.6.1995 Shiv Prasad, father of claimant nos. 3 to 6 and husband of claimant no.2 was traveling by Bus No. USY-3268 belonging to Appellants No.1 and 2 and driven by Appellant no. 3, from Pokhari to Karnprayag. The bus was over crowded and the conductor of the said bus insisted him to ride on the roof of the bus. As soon as the bus went ahead few kilometers from Pokhari, the driver, in order to drop passengers at place Devarkhal, applied the brakes heavily, with the result Shiv Prasad fell down from the roof of the bus and sustained grievous injuries. He became unconscious at the spot and was brought to Pokhari Hospital, where the Medical Officer Incharge declared him dead. It is alleged that at the time of incident, the deceased was aged 41 years and was posted on the post of *Beldar* in the office of Executive Engineer, Construction Division, Pokhari and drawing Rs. 2218.00 per month. The deceased used to spent Rs. 1500/- per month on his family. It is also alleged that had the accident not occurred, the deceased would have served the Department for 17 years more and he would have spared amount of Rs. 3,50,000/- to meet the expenses of his family. It is also alleged that the claimants have suffered loss of consortium, love and affection, etc. due to death of Shiv Prasad. The claimants have, therefore, filed the petition for compensation worth Rs.4,55,000/- for the death of Shiv Prasad.

3. The owners of the bus, Appellant Nos. 1 and 2 contested the petition by filing joint written statement. They have admitted the fact that the death of the deceased was

result of fall from the ladder of the bus. They have pleaded that the bus in question was insured with respondent No.1, Insurance Company, therefore, the liability to pay compensation, if any, rests on it. it was also pleaded that the Insurance Company was informed about the accident on 14.6,1995,

4. The driver of the bus, Appellant No.3 was served by publication in Dainik Amar Ujala, but he had not put in appeareance to contest the petition, hence the case proceeded ex-parte against him.

5. The Insurance Company,Respondent No.1, also contested the petition by filing written statement on the ground that the facts regarding registration of the vehicle, fitness certificate and driving licence etc. were lacking and that the vehicle was being plied in accordace with the Rules. The Insurace Company has denied its liability to pay compensation.

6. On the pleadings of the parties, the learned Tribunal framed the necessary issues.

7. The learned Tribunal, after hearing both the parties, and going through the record, came to the conclusion that there was no evidence on record worth the name to show that at the time of alleged incident, to show that the bus was being driven rashly and negligently by its driver Dhan Singh. No eye witness of the accident was produced before the Tribunal. The learned Tribunal was also of the view that the deceased was himself responsible for sitting on the roof of the bus, even if he would have been directed by the conductor to do so. Ultimately, the Tribunal found on Issue No.1 that though there were several passengers travelling in the bus, but none of them has been produced to give ocular account of the said accident to testify that the bus was being driven rashly and

negligently by its driver. According to learned Tribunal, undisputedly the deceased died as a result of fall from the roof of the bus, but there was nothing on record to indicate that due to sudden and faulty aplication of brakes, the said accident took place. The Tribunal came to the conclusion that there is unrebutted testimony of claimant/respondent No.2 Smt. Sushila Devi, widow of the deceased to the effect that the claimants have suffered loss to the tune of Rs. 4,55,000/- due to death of Shiv Prasad. It has also been held that for want of documentary evidence, it cannot be said that the driver of the bus was holding valid registration certificate, road permit etc., therefore, the learned Tribunal has absolved the Insurance Company from its liability to pay compensation. The Tribunal has further observed that since the alleged accident was not a result of rash and negligent driving by the driver of the bus, therefore, the claimants/respondents No.2 to 6 are not entitled to any compensation under Section 166 of the Motor Vehicles Act. However, as per provisions of 'No fault Liability' under Section 140 of the Motor Vehicles Act, the learned Tribunal found the claimants/respondents No.2 to 6 entitled for the compensation amount of Rs. 50,000/- (fifty thousand payable by Opposite party/Appellants Nos. 1, 2 and 3, and, as mentioned earlier, the learned Tribunal has passed the impugned order.

8. Aggrieved by the impugned judgment and Award, the appellants have preferred the present appeal.

9. The appellants have assailed the impugned judgment and order firstly on the ground that it was proved on record that the death of deceased Shiv Prasad was the result of rash and negligent driving of the bus driver and secondly, that the learned Tribunal has violated the provisions of the Motor

Vehicles Act, 1988 holding the owner liable to pay compensation amount.

10. I have heard the learned counsel for both the parties and have carefully gone through the entire material on record as well as the impugned judgment and order of the learned Tribunal.

11. I am not inclined to accept either of the contentions raised by the appellants before me, ***firstly***, because there is not an iota of evidence on record that the deceased Shiv Prasad was travelling in the alleged bus in the capacity of a valid passenger. ***Secondly***, there is nothing on record to indicate that the deceased had paid the amount of fare for the journey to the conductor and obtained a ticket. ***Thirdly***, it is not disputed that the deceased died as a result of fall either from the roof of the bus or from the back-side ladder of the vehicle in question and there is no evidence worth the name to lead me to an inference that at the relevant time, the bus driver was driving the bus rashly and negligently, though, according to the claimants/respondents themselves the bus was over-crowded and full of passengers; but the claimants could not produce even a single person to give the ocular version of the alleged accident before the Tribunal. **Fourthly**, the leaned Tribunal has rightly held that the deceased himself was responsible for riding over the roof of the bus to undertake his journey. ***Fifthly***, the evidence of respondent No.2 Sushila Devi to the effect that the deceased Shiv Prasad died due to severe impact of sudden application of brakes by the bus driver. In her cross-examination before the leaned Tribunal, she had clearly admitted that at the time of alleged accident she was at her house and she was not an eye witness of the accident. She has also admitted that she was informed of the accident by someone; but

neither she could name the said person nor has produced him for the reasons best known to her. ***Lastly***, the Tribunal has rightly awarded compensation of Rs. 50,000/- to the claimants/respondents No.2 to 6 and has correctly fastened this ***No Fault Liability*** on the owners of the bus as provided under Section 140 of the Motor Vehicles Act. In my opinion, the impugned judgment and Award does not suffer from any illegality or infirmity. Consequently, the findings of the learned Tribunal do not call for any interference by this Court.

12. Accordingly, the appeal has no merit and is liable to be dismissed. The appeal filed by the claimant (Appeal No.832 of 2001) had already been dismissed by the Division Bench of this Court on 3.8.2004. The judgment impugned had been affirmed by the Division Bench of this Court.

13. The appeal is hereby dismissed. The judgment and order under appeal is upheld. There will be no order as to costs.

(J.C.S.Rawat,J)

03.07.2006
Negi.